

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	
)	Judge Patti B. Saris
ALL ACTIONS)	
)	
)	
)	

DECLARATION OF TIMOTHY RICHARDS

1. My name is Timothy Richards. I am the Senior Vice President of Marketing at B. Braun Medical Inc. ("B. Braun Medical" or "BBM"). I am over 21 years of age. I provide this declaration based on my own personal knowledge and after reasonable inquiry of available sources of information at BBM.

2. B. Braun Medical is a Pennsylvania corporation, with its principal place of business located at 824 Twelfth Avenue, Bethlehem, Pennsylvania. Among the drugs BBM sells are the six drugs referenced in the Second Amended Master Consolidated Class Action Complaint ("SAMCC") -- namely, dextrose, dextrose with sodium chloride, dextrose in lactated ringers, heparin sodium (porcine) in d5w, sodium chloride, and sodium chloride (gu irrigant). See SAMCC, ¶ 314 & Appendix A.

3. These six referenced BBM drugs are all generic, multi-source intravenous solutions, which are generally administered by a physician or other healthcare provider. I understand that these drugs are considered to be physician-administered drugs under Medicare Part B, not self-administered.

4. I understand that the SAMCC appears to allege that B. Braun Medical has contracts or relationships relating to the six referenced BBM drugs with certain pharmacy benefit managers (“PBMs”) identified in the SAMCC, including AdvancePCS, Caremark, Rx, Inc., Express Scripts, Inc., and Medco Health Solutions. *See* SAMCC ¶ 661(h). This allegation is wrong. B. Braun Medical has never had any contracts or relationships with any of these PBMs relating to any of the six referenced BBM drugs.

5. The SAMCC alleges the existence of “four separate associations-in-fact consisting of each of the PBMs that administered purchases of Braun’s [the six referenced BBM drugs] and billed its members on the basis of Braun’s reported AWP’s.” SAMCC ¶ 661(h). This allegation is wrong. As noted above, B. Braun Medical does not have any contracts or relationships relating to the six referenced BBM drugs with any of the named PBMs. Nor is B. Braun Medical aware of any named PBM that has either “administered purchases” of any of these drugs or has “billed [the PBM’s] members on the basis of Braun’s reported AWP’s.”

6. The SAMCC alleges that “[e]ach of the Braun Manufacturer-PBM Enterprises is an ongoing and continuing business organization consisting of both corporations and individuals that are and have been associated for the common or shared purpose of selling, purchasing, prescribing and administering [the six referenced drugs] to Plaintiffs and Class members, and deriving profits from these activities.” SAMCC ¶ 661(h). This allegation is wrong. B. Braun Medical does not have any contracts or relationships with any of the named PBMs relating to any of these drugs, and it is not “associated” with any of the named PBMs for the “purpose of selling, purchasing, prescribing, or administering” any of these drugs.

7. The SAMCC alleges that “[e]ach of the Braun Manufacturer-PBM Enterprises has a systematic linkage because there are contractual relationships, financial ties, and continuing

coordination of activities between Braun and AdvancePCS, Braun and Caremark Rx, Braun and Express Scripts, and Braun and Medco Health.” SAMCC ¶ 661(h). This allegation is wrong. I understand that the plaintiffs have not identified any contract, explained any financial tie, or described any coordination of activities between B. Braun Medical and any of the named PBMs. In addition, contrary to plaintiffs’ further allegation, there is no “common communication network by which Braun and Advance PSC, Braun and Caremark Rx, Braun and Express Scripts, and Braun and Medco Health share information on a regular basis.” *See* SAMCC ¶ 661(h).

8. Also wrong is the SAMCC’s allegation that, “[a]s to each of these Braun Manufacturer-PBM Enterprises, Braun and Advance PCS, Braun and Caremark Rx, Braun and Express Scripts, and Braun and Medco Health functioned as continuing but separate units.” SAMCC ¶ 661(h). B. Braun Medical has not entered into any contract, relationship, or other functional arrangement relating to any of the six referenced BBM drugs with any of these identified PBMs.

9. The SAMCC’s allegation that “each Braun Manufacturer-PBM Enterprise was operated and conducted by Braun for criminal purposes, namely, carrying out the AWP Scheme,” is wrong. *See* SAMCC ¶ 661(h). B. Braun Medical has not associated with any of the named PBMs in any way relating to any of the six referenced BBM drugs.

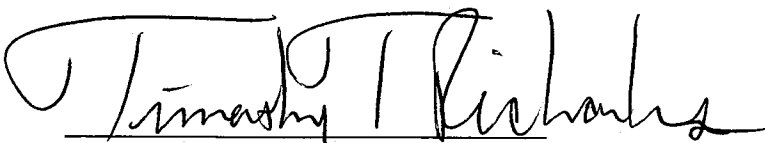
10. The SAMCC also alleges – generally as to each defendant – that “PBMs have, with the knowing and willful assistance of the drug manufacturers, engaged in hidden profit-making schemes falling into three general categories: (i) garnering rebates and other ‘soft dollars’ from drug manufacturers that the PBM Defendants [sic], to a large extent, keep without disclosing to their health plans the true amount of the rebates; (ii) pocketing secret spreads

between actual drug costs and the prices charged to health plans and their members; and (iii) keeping secret discounts provided by the drug manufacturers in association with the PBMs' mail order operations." SAMCC ¶ 654. To the extent that this allegation is meant to be made against B. Braun Medical, it is wrong. B. Braun Medical has not provided any rebates, "soft dollars," discounts (secret or otherwise), or other payments relating to any of the six referenced BBM drugs to any of the named PBMs.

11. B. Braun Medical's records have been investigated to determine whether there is any information that would suggest that any of the named plaintiffs has purchased any of the six referenced BBM drugs through one of the named PBMs. Based on this investigation, BBM does not have any records showing that any named plaintiff has in fact made such a purchase.

I declare under penalty of perjury that the foregoing is true and correct based on my own personal knowledge and after reasonable inquiry of available sources of information at B. Braun Medical.

Executed on March 18, 2005.


Timothy Richards